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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 EVAN HARRIS, *an individual*,

14 Plaintiff,

15 v.

16 FEDEX CORPORATION, *a Delaware*
17 *corporation registered in California*,
18 FEDERAL EXPRESS CORPORATION,
19 *a Delaware corporation registered in*
20 *California*, and DOES 1-10,

21 Defendants.

Case No. 2:23-cv-00645-ODW (AFMx)

~~[PROPOSED]~~ PROTECTIVE ORDER

[DISCOVERY MATTER]

22 **1. PURPOSES AND LIMITATIONS**

23 Discovery in this action is likely to involve production of confidential, proprietary,
24 or private information for which special protection from public disclosure and from use
25 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
26 parties hereby stipulate to and petition the Court to enter the following Stipulated
27 Protective Order. The parties acknowledge that this Order does not confer blanket
28 protections on all disclosures or responses to discovery and that the protection it affords

1 from public disclosure and use extends only to the limited information or items that
2 are entitled to confidential treatment under the applicable legal principles.

3 GOOD CAUSE STATEMENT

4 This action is likely to involve confidential commercial, financial, medical,
5 personal identifying information and contact information for non-party current and
6 former employees, employee personnel file(s) for current and/or non-party
7 employees, and/or proprietary information for which special protection from public
8 disclosure and from use for any purpose other than prosecution of this action is
9 warranted. Such confidential and proprietary materials and information consist of,
10 among other things, confidential business, financial, personnel, and/or medical
11 records and information (including information implicating privacy rights of third
12 parties), information otherwise generally unavailable to the public, or which may be
13 privileged or otherwise protected from disclosure under state or federal statutes,
14 court rules, case decisions, or common law. Accordingly, to expedite the flow of
15 information, to facilitate the prompt resolution of disputes over confidentiality of
16 discovery materials, to adequately protect information the parties are entitled to keep
17 confidential, to ensure that the parties are permitted reasonable necessary uses of
18 such material in preparation for and in the conduct of trial, to address their handling
19 at the end of the litigation, and serve the ends of justice, a protective order for such
20 information is justified in this matter. It is the intent of the parties that information
21 will not be designated as confidential for tactical reasons and that nothing be so
22 designated without a good faith belief that it has been maintained in a confidential,
23 non-public manner, and there is good cause why it should not be part of the public
24 record of this case.

25 ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

26 The parties further acknowledge, as set forth in Section 12.3, below, that this
27 Stipulated Protective Order does not entitle them to file confidential information
28 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed

1 and the standards that will be applied when a party seeks permission from the court to file
2 material under seal.

3 There is a strong presumption that the public has a right of access to judicial
4 proceedings and records in civil cases. In connection with non-dispositive motions, good
5 cause must be shown to support a filing under seal. *See Kamakana v. City and County of*
6 *Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors Corp.*, 307 F.3d
7 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576,
8 577 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and
9 a specific showing of good cause or compelling reasons with proper evidentiary support
10 and legal justification, must be made with respect to Protected Material that a party seeks
11 to file under seal. The parties' mere designation of Disclosure or Discovery Material as
12 CONFIDENTIAL does not—without the submission of competent evidence by
13 declaration, establishing that the material sought to be filed under seal qualifies as
14 confidential, privileged, or otherwise protectable—constitute good cause.

15 Further, if a party requests sealing related to a dispositive motion or trial, then
16 compelling reasons, not only good cause, for the sealing must be shown, and the relief
17 sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos*
18 *v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type
19 of information, document, or thing sought to be filed or introduced under seal in
20 connection with a dispositive motion or trial, the party seeking protection must articulate
21 compelling reasons, supported by specific facts and legal justification, for the requested
22 sealing order. Again, competent evidence supporting the application to file documents
23 under seal must be provided by declaration.

24 Any document that is not confidential, privileged, or otherwise protectable in its
25 entirety will not be filed under seal if the confidential portions can be redacted. If
26 documents can be redacted, then a redacted version for public viewing, omitting only the
27 confidential, privileged, or otherwise protectable portions of the document, shall be filed.
28 Any application that seeks to file documents under seal in their entirety should include an

1 explanation of why redaction is not feasible.

2 **2. DEFINITIONS**

3 **2.1 Action:** the above-captioned case.

4 **2.2 Challenging Party:** a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 **2.3 “CONFIDENTIAL” Information or Items:** information (regardless of how it
7 is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above
9 in the Good Cause Statement.

10 **2.4 Counsel (without qualifier):** Outside Counsel of Record and House Counsel
11 (as well as their support staff).

12 **2.5 Designating Party:** a Party or Non-Party that designates information or items
13 that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 **2.6 Disclosure or Discovery Material:** all items or information, regardless of the
16 medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are
18 produced or generated in disclosures or responses to discovery in this matter.

19 **2.7 Expert:** a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to
21 serve as an expert witness or as a consultant in this Action.

22 **2.8 House Counsel:** attorneys who are employees of a party to this Action. House
23 Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 **2.9 Non-Party:** any natural person, partnership, corporation, association or other
26 legal entity not named as a Party to this action.

27 **2.10 Outside Counsel of Record:** attorneys who are not employees of a party to this
28 action but are retained to represent or advise a party to this Action and have

1 appeared in this action on behalf of that party or are affiliated with a law firm
 2 which has appeared on behalf of that party, and includes support staff.

3 **2.11 Party:** any party to this action, including all of its officers, directors,
 4 employees, consultants, retained experts, and Outside Counsel of Record (and
 5 their support staffs).

6 **2.12 Producing Party:** a Party or Non-Party that produces Disclosure or Discovery
 7 Material in this action.

8 **2.13 Professional Vendors:** persons or entities, not employed by or affiliated with
 9 a Party, that provide litigation support services (e.g., photocopying,
 10 videotaping, translating, preparing exhibits or demonstrations, and
 11 organizing, storing, or retrieving data in any form or medium) and their
 12 employees and subcontractors.

13 **2.14 Protected Material:** any Disclosure or Discovery Material that is designated
 14 as “CONFIDENTIAL.”

15 **2.15 Receiving Party:** a Party that receives Disclosure or Discovery Material from
 16 a Producing Party.

17 **3. SCOPE**

18 The protections conferred by this Stipulation and Order cover not only Protected
 19 Material (as defined above), but also (1) any information copied or extracted from
 20 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
 21 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
 22 that might reveal Protected Material. Any use of Protected Material at trial shall be
 23 governed by the orders of the trial judge. This Order does not govern the use of Protected
 24 Material at trial.

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26 **4. DURATION**

27 Even after final disposition of this litigation, the confidentiality obligations imposed
 28 by this Order shall remain in effect until a Designating Party agrees otherwise in writing

or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced. Designation in conformity with this Order requires:

- (a) for information in documentary form (e.g., paper or electronic documents, but

1 excluding transcripts of depositions or other pretrial or trial proceedings), that
2 the Producing Party affix at a minimum, the legend “CONFIDENTIAL” to
3 each page that contains protected material. If only a portion or portions of the
4 material on a page qualifies for protection, the Producing Party also must
5 clearly identify the protected portions(s) (e.g., by making appropriate
6 markings in the margins).

7 (b) A Party or Non-Party that makes original documents available for inspection
8 need not designate them for protection until after the inspecting Party has
9 indicated which documents it would like copied and produced. During the
10 inspection and before the designation, all of the material made available for
11 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party
12 has identified the documents it wants copied and produced, the Producing
13 Party must determine which documents, or portions thereof, qualify for
14 protection under this Order. Then, before producing the specified documents,
15 the Producing Party must affix the “CONFIDENTIAL legend” to each page
16 that contains Protected Material. If only a portion or portions of the material
17 on a page qualifies for production, the Producing Party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the
19 margins).

20 (c) For testimony given in depositions, that the Designating Party identify the
21 Disclosure or Discovery Material on the record, before the close of the
22 deposition all protected testimony.

23 (d) for information produced in some form other than documentary and for any
24 other tangible items, that the Producing Party affix in a prominent place on
25 the exterior of the container or containers in which the information is stored
26 the legend “CONFIDENTIAL.” If only a portion or portions of the
27 information warrants protection, the Producing Party, to the extent
28 practicable, shall identify the protected portion(s).

1 **5.3** Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 2 to designate qualified information or items does not, standing alone, waive the
 3 Designating Party's right to secure protection under this Order for such
 4 material. Upon timely correction of a designation, the Receiving Party must
 5 make reasonable efforts to assure that the material is treated in accordance
 6 with the provisions of this Order.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 **6.1** Timing of Challenges. Any Party or Non-Party may challenge a designation
 9 of confidentiality at any time that is consistent with the Court's Scheduling
 10 Order.

11 **6.2** Meet and Confer. The Challenging Party shall initiate the dispute resolution
 12 process under Local Rule 37-1 *et seq.*

13 **6.3** Joint Stipulation. Any challenge submitted to the Court shall be via a joint
 14 stipulation pursuant to Local Rule 37-1 *et seq.*

15 **6.4** The burden of persuasion in any such challenge proceeding shall be on the
 16 Designating Party. Frivolous challenges, and those made for an improper
 17 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 18 parties) may expose the Challenging Party to sanctions. Unless the
 19 Designating Party has waived or withdrawn the confidentiality designation,
 20 all parties shall continue to afford the material in question the level of
 21 protection to which it is entitled under the Producing Party's designation until
 22 the Court rules on the challenge.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 **7.1** Basic Principles. A Receiving Party may use Protected Material that is
 25 disclosed or produced by another Party or by a Non-Party in connection with
 26 this Action only for prosecuting, defending or attempting to settle this Action.
 27 Such Protected Material may be disclosed only to the categories of persons
 28 and under the conditions described in this Order. When the Action has been

terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

- (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (d) the court and its personnel;
- (e) court reporters and their staff;
- (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
- (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless

otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

- (i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

- (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

- 3 (a) The terms of this Order are applicable to information produced by a Non-Party
4 in this Action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions
7 should be construed as prohibiting a Non-Party from seeking additional
8 protections.
- 9 (b) In the event that a Party is required, by a valid discovery request, to produce
10 a Non-Party’s confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party’s
12 confidential information, then the Party shall:
- 13 1) promptly notify in writing the Requesting Party and the Non-Party that some
14 or all of the information requested is subject to a confidentiality agreement
15 with a Non-Party;
- 16 2) promptly notify in writing the Requesting Party and the Non-Party that some
17 or all of the information requested is subject to a confidentiality agreement
18 with a Non-Party;
- 19 3) make the information requested available for inspection by the Non-Party, if
20 requested.
- 21 (c) If the Non-Party fails to seek a protective order from this court within 14 days
22 of receiving the notice and accompanying information, the Receiving Party
23 may produce the Non-Party’s confidential information responsive to the
24 discovery request. If the Non-Party timely seeks a protective order, the
25 Receiving Party shall not produce any information in its possession or control
26 that is subject to the confidentiality agreement with the Non-Party before a
27 determination by the court. Absent a court order to the contrary, the Non-
28 Party shall bear the burden and expense of seeking protection in this court of

its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed

1 in this Stipulated Protective Order. Similarly, no Party waives any right to
 2 object on any ground to use in evidence of any of the material covered by this
 3 Protective Order.

4 **12.3 Filing Protected Material.** A Party that seeks to file under seal any Protected
 5 Material must comply with Local Civil Rule 79-5. Protected Material may
 6 only be filed under seal pursuant to a court order authorizing the sealing of
 7 the specific Protected Material at issue. If a Party's request to file Protected
 8 Material under seal is denied by the court, then the Receiving Party may file
 9 the information in the public record unless otherwise instructed by the court.

10 **13. FINAL DISPOSITION**

11 After the final disposition of this Action, as defined in paragraph 4, within 60 days
 12 of a written request by the Designating Party, each Receiving Party must return all
 13 Protected Material to the Producing Party or destroy such material. As used in this
 14 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 15 summaries, and any other format reproducing or capturing any of the Protected Material.
 16 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
 17 a written certification to the Producing Party (and, if not the same person or entity, to the
 18 Designating Party) by the 60 day deadline that (1) identifies (by category, where
 19 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
 20 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
 21 other format reproducing or capturing any of the Protected Material. Notwithstanding this
 22 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
 23 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition
 24 and trial exhibits, expert reports, attorney work product, and consultant and expert work
 25 product, even if such materials contain Protected Material. Any such archival copies that
 26 contain or constitute Protected Material remain subject to this Protective Order as set forth
 27 in Section 4.

28 **14. VIOLATION**

1 Any violation of this Order may be punished by appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.

3 **IT IS SO STIPULATED.**

4 DATED: March 20, 2023

LEGALAXXIS, INC.

/s/Nazgole Hashemi

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Nazgole Hashemi, Esq.
Tannaz Hashemi, Esq.
Attorneys for Plaintiff,
EVAN HARRIS

10 DATED: March 20, 2023

**FEDERAL EXPRESS
CORPORATION**

/s/ Thomas J. Moran

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Thomas J. Moran
Attorney for Defendant,
FEDERAL EXPRESS
CORPORATION

SIGNATURE CERTIFICATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby certify that authorization for the filing of this document has been obtained from each of the other signatories shown above and that all signatories concur in the filing's content.

DATED: March 20, 2023

/s/Nazgole Hashemi

NAZGOLE HASHEMI

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 3/21/2023



HON. ALEXANDER F. MacKINNON

United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____, 20__ in the case of *Evan Harris v. Federal Express Corporation et al.*, Case No. 2:23-cv-00645-ODW (AFMx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____